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3                   UNITED STATES DISTRICT COURT  
4                   WESTERN DISTRICT OF WASHINGTON  
5                   AT TACOMA

6 EDWARD LEON WOODS,

7                   Plaintiff,

8                   v.

9 CAROLYN W. COLVIN, Acting  
10                   Commissioner of Social Security,

11                   Defendant.

Case No. 2:15-cv-00135-RBL

ORDER AFFIRMING DEFENDANT'S  
DECISION TO DENY BENEFITS

12 Plaintiff Woods has brought this matter for judicial review of defendant's denial of his  
13 applications for disability insurance and supplemental security income ("SSI") benefits.  
14

15                   FACTUAL AND PROCEDURAL HISTORY

16 Woods protectively filed applications for disability insurance benefits and SSI benefits on  
17 April 22, 2011, claiming he became disabled beginning May 1, 2008. *See* Dkt. 11,  
18 Administrative Record ("AR") 13. Those applications were denied upon initial administrative  
19 review on June 9, 2011, and on reconsideration on January 27, 2012. *See id.* An ALJ held a  
20 hearing on March 18, 2013. Woods and his attorney appeared and testified, as did a vocational  
21 expert. *See* AR 42-83.

22 In a decision dated May 30, 2013, the ALJ determined Woods to be not disabled. *See* AR  
23 13-35. Woods's request for review of the ALJ's decision was denied by the Appeals Council on  
24 November 21, 2014, making that decision the final decision of the Commissioner of Social  
25 Security. *See* AR 1-5; 20 C.F.R. § 404.981, § 416.1481. On January 30, 2015, Woods filed a

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1 complaint in this Court seeking judicial review of the Commissioner's final decision. The matter  
2 is ripe for the Court's review.

3 Woods argues defendant's decision to deny benefits should be reversed and remanded for  
4 further administrative proceedings, because the ALJ erred: (1) in evaluating the medical  
5 evidence in the record; (2) in evaluating Woods's credibility; and (3) in finding Woods to be  
6 capable of performing other jobs existing in significant numbers in the national economy. For the  
7 reasons below, the ALJ did not err in determining Woods to be not disabled, and the decision to  
8 deny benefits is AFFIRMED.

10 DISCUSSION

11 The determination of the Commissioner that a claimant is not disabled must be upheld by  
12 the Court, if the "proper legal standards" have been applied by the Commissioner, and the  
13 "substantial evidence in the record as a whole supports" that determination. *Hoffman v. Heckler*,  
14 785 F.2d 1423, 1425 (9th Cir. 1986); *see also Batson v. Comm'r, Soc. Sec. Admin.*, 359 F.3d  
15 1190, 1193 (9th Cir. 2004); *Carr v. Sullivan*, 772 F.Supp. 522, 525 (E.D. Wash. 1991) ("A  
16 decision supported by substantial evidence will, nevertheless, be set aside if the proper legal  
17 standards were not applied in weighing the evidence and making the decision.") (citing *Brawner*  
18 *v. Sec'y of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1987)).

20 Substantial evidence is "such relevant evidence as a reasonable mind might accept as  
21 adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citation  
22 omitted); *see also Batson*, 359 F.3d at 1193 ("[T]he Commissioner's findings are upheld if  
23 supported by inferences reasonably drawn from the record."). "The substantial evidence test  
24 requires that the reviewing court determine" whether the Commissioner's decision is "supported  
25 by more than a scintilla of evidence, although less than a preponderance of the evidence is

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1 required.” *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). “If the evidence  
 2 admits of more than one rational interpretation,” the Commissioner’s decision must be upheld.  
 3 *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984) (“Where there is conflicting evidence  
 4 sufficient to support either outcome, we must affirm the decision actually made.”) (quoting  
 5 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971)).<sup>1</sup>

6  
 7 A. Medical Evidence.

8 The ALJ is responsible for determining credibility and resolving ambiguities and  
 9 conflicts in the medical evidence. *See Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998).  
 10 Where the medical evidence in the record is not conclusive, “questions of credibility and  
 11 resolution of conflicts” are solely the functions of the ALJ. *Sample v. Schweiker*, 694 F.2d 639,  
 12 642 (9th Cir. 1982). In such cases, “the ALJ’s conclusion must be upheld.” *Morgan v. Comm’r,*  
 13 *Soc. Sec. Admin.*, 169 F.3d 595, 601 (9th Cir. 1999). Determining whether inconsistencies in the  
 14 medical evidence “are material (or are in fact inconsistencies at all) and whether certain factors  
 15 are relevant to discount” the opinions of medical experts “falls within this responsibility.” *Id.* at  
 16 603.  
 17

18 In resolving questions of credibility and conflicts in the evidence, an ALJ’s findings  
 19 “must be supported by specific, cogent reasons.” *Reddick*, 157 F.3d at 725. The ALJ can do this  
 20 “by setting out a detailed and thorough summary of the facts and conflicting clinical evidence,

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22  
 23 <sup>1</sup> The Ninth Circuit has explained that the Commisioner (and not the court) resolves conflicts in the evidence:  
 24  
 25 It is immaterial that the evidence in a case would permit a different conclusion than that  
 26 which the [Commissioner] reached. If the [Commissioner]’s findings are supported by  
 substantial evidence, the courts are required to accept them. It is the function of the  
 [Commissioner], and not the court to resolve conflicts in the evidence. While the court may  
 not try the case de novo, neither may it abdicate its traditional function of review. It must  
 scrutinize the record as a whole to determine whether the [Commissioner]’s conclusions are  
 rational. If they are . . . they must be upheld.

*Sorenson*, 514 F.2d at 1119 n.10.

1 stating his interpretation thereof, and making findings.” *Id.* The ALJ also may draw inferences  
2 “logically flowing from the evidence.” *Sample*, 694 F.2d at 642. Further, the Court itself may  
3 draw “specific and legitimate inferences from the ALJ’s opinion.” *Magallanes v. Bowen*, 881  
4 F.2d 747, 755 (9th Cir. 1989).

5       The ALJ must provide “clear and convincing” reasons for rejecting the uncontradicted  
6 opinion of either a treating or examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.  
7 1996). Even when a treating or examining physician’s opinion is contradicted, that opinion “can  
8 only be rejected for specific and legitimate reasons that are supported by substantial evidence in  
9 the record.” *Id.* at 830-31. However, the ALJ “need not discuss *all* evidence presented” to him or  
10 her. *Vincent on Behalf of Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984) (citation  
11 omitted) (emphasis in original). The ALJ must only explain why “significant probative evidence  
12 has been rejected.” *Id.*; see also *Cotter v. Harris*, 642 F.2d 700, 706-07 (3d Cir. 1981); *Garfield*  
13 v. *Schweiker*, 732 F.2d 605, 610 (7th Cir. 1984).

14       In general, more weight is given to a treating physician’s opinion than to the opinions of  
15 those who do not treat the claimant. See *Lester*, 81 F.3d at 830. On the other hand, an ALJ need  
16 not accept the opinion of a treating physician, “if that opinion is brief, conclusory, and  
17 inadequately supported by clinical findings” or “by the record as a whole.” *Batson*, 359 F.3d at  
18 1195; see also *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002); *Tonapetyan v. Halter*,  
19 242 F.3d 1144, 1149 (9th Cir. 2001). An examining physician’s opinion is “entitled to greater  
20 weight than the opinion of a nonexamining physician.” *Lester*, 81 F.3d at 830-31. A non-  
21 examining physician’s opinion may constitute substantial evidence if “it is consistent with other  
22 independent evidence in the record.” *Id.* at 830-31; *Tonapetyan*, 242 F.3d at 1149.

1     1. State agency medical consultant Guillermo Rubio, M.D.

2                 Woods asserts that the ALJ erred by giving great weight to the medical opinion of state  
 3 agency consultant Guillermo Rubio, M.D. *See* Dkt. 13, pp. 4-6. Woods argues that the ALJ  
 4 improperly relied entirely on the “stale” opinion of a non-examining source over that of  
 5 examining physicians.<sup>2</sup> *See* Dkt. 13, pp. 4-5. However, Woods mischaracterizes the ALJ’s  
 6 decision, as he gave weight to portions of the opinions of several treating and examining  
 7 physicians, giving specific reasons for discounting other portions of their opinions, which Woods  
 8 does not challenge here. *See* AR 29-32. Finding that Dr. Rubio’s opinion was consistent with  
 9 other medical evidence in the record, the ALJ properly gave it weight while in fact assessing  
 10 stronger limitations in Woods’s RFC. *See* AR 33; *Lester*, 81 F.3d at 830-31. That other medical  
 11 evidence was produced from after the date of Dr. Rubio’s opinion does not alone render it stale.  
 12 Unlike in the several cases cited by Woods, Dr. Rubio’s 2012 opinion was not issued several  
 13 years before the ALJ’s decision, nor did the ALJ fail to consider and address the subsequent  
 14 medical evidence and give reasons for discounting any opined limitations not included in the  
 15 RFC. *See* AR 29-32, 107-17. Therefore, the ALJ’s assignment of great weight to Dr. Rubio’s  
 16 opinion was not error.

19     2. Treating physician Kim Vanderzee, M.D.

21                 Woods asserts that the ALJ erred by discounting the opinion of treating physician Kim  
 22 Vanderzee, M.D. *See* Dkt. 13, pp. 6-10.<sup>3</sup> Among the many discounted limitations opined by Dr.  
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24     <sup>2</sup> Woods also notes that the ALJ did not indicate to which of Dr. Rubio’s two opinions he was giving great weight.  
 25 *See* Dkt. 13, p. 4. However, the RFC assessed by the ALJ is consistent with the more restrictive of Dr. Rubio’s two  
 26 opinions, so Woods shows no harmful error. *See* AR 18, 107-17, 118-27.

26     <sup>3</sup> In this section of the brief, Woods also notes that several other physicians found more restrictive limitations than  
 those assessed in the RFC. *See* Dkt. 13, pp. 6-7. However, he fails to argue with any specificity against the reasons  
 given by the ALJ for discounting those opinions. *See id.* Therefore, Woods fails to sufficiently raise any issues here.  
*See Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008) (declining to address issues  
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1 Vanderzee, Woods specifically takes issue only with the ALJ's dismissal of Dr. Vanderzee's  
 2 2012 statement that Woods had not improved over the past two years as a conclusory statement  
 3 that went to the ultimate issue of disability. *See Dkt. 13, pp. 7-8.* However, what the ALJ was  
 4 dismissing as conclusory was Dr. Vanderzee's full statement that Woods was unlikely to be able  
 5 to maintain full-time employment in even a sedentary capacity, as his condition had not  
 6 improved. *See AR 32.* In dismissing the statement as a whole, the ALJ was not addressing  
 7 whether it was factually accurate that Woods had not improved over the past two years. The ALJ  
 8 was properly giving little weight to the ultimate opinion that Woods could not perform even  
 9 sedentary work because it is a conclusory statement that has no applicability to assessing  
 10 Woods's RFC. *See Weetman v. Sullivan, 877 F.2d 20, 22 (9th Cir. 1989)* (ALJ not bound by  
 11 medical opinions on ultimate issue of disability). Regardless, whether or not Woods had  
 12 improved is similarly a conclusory statement that cannot be translated into a functional  
 13 assessment.<sup>4</sup> Therefore, the ALJ did not err by dismissing Dr. Vanderzee's statement.

16 3. The remaining medical evidence.

17 Woods continues to assert that the ALJ erred in evaluating the medical evidence in  
 18 various ways. *See Dkt. 13, pp. 11-12.* However, in doing so, Woods fails to identify harmful  
 19 error with any specificity. *See Carmickle v. Comm'r, Soc. Sec. Admin., 533 F.3d 1155, 1161 n.2*  
 20 (9th Cir. 2008) (court may decline to address issues raised without any specificity). For any  
 21 alleged error in the ALJ's analysis of the medical evidence to be harmful, it must be clear that

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23 raised without any specificity). The Court will not re-weigh the record on its own, as "questions of credibility and  
 24 resolution of conflicts" are solely the functions of the ALJ. *Sample, 694 F.2d at 642.*

25 <sup>4</sup> Woods spends a significant portion of his Opening Brief arguing that he in fact had not improved during the two  
 26 years prior to March of 2012, as Dr. Vanderzee opined. *See Dkt. 13, pp. 8-10.* However, Woods fails to argue with  
 any specificity against the specific and legitimate reasons the ALJ already gave for discounting parts of Dr.  
 Vanderzee's various opinions during that earlier time frame. *See AR 31-32.* Even if the ALJ agreed that Woods had  
 not improved, his reasons for discounting Dr. Vanderzee's opined limitations would remain unchanged. Woods  
 shows no harmful error.

1 the RFC assessed (and therefore the step-five analysis) was not supported by substantial  
2 evidence. *See Ludwig v. Astrue*, 681 F.3d 1047, 1054 (9th Cir. 2012) (“The burden is on the  
3 party claiming error to demonstrate not only the error, but also that it affected his “substantial  
4 rights,” which is to say, not merely his procedural rights.”) (citing *Shinseki v. Sanders*, 556 U.S.  
5 396, 407-09 (2009)). While Woods disagrees with the ALJ finding significance in Dr.  
6 Vanderzee’s concurrence with other assessments, he fails to show any impact on the RFC  
7 assessed.

8

9 **B. The ALJ’s Evaluation of Woods’s Credibility.**

10 Questions of credibility are left solely to the ALJ. *See Sample*, 694 F.2d at 642. The  
11 Court should not “second-guess” credibility determinations. *Allen*, 749 F.2d at 580. The Court  
12 may not reverse a credibility determination where that determination is based on contradictory or  
13 ambiguous evidence. *See id.* at 579. That some of the reasons for discrediting a claimant’s  
14 testimony should properly be discounted does not render the ALJ’s determination invalid, as  
15 long as that determination is supported by substantial evidence. *Tonapetyan*, 242 F.3d at 1148.

16 To reject a claimant’s subjective complaints, the ALJ must provide “specific, cogent  
17 reasons for the disbelief.” *Lester*, 81 F.3d at 834 (citation omitted). The ALJ “must identify what  
18 testimony is not credible and what evidence undermines the claimant’s complaints.” *Id.*; *see also*  
19 *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993). Unless affirmative evidence shows the  
20 claimant is malingering, the ALJ’s reasons for rejecting the claimant’s testimony must be “clear  
21 and convincing.” *Lester*, 81 F.2d at 834. The evidence as a whole must support a finding of  
22 malingering. *See O’Donnell v. Barnhart*, 318 F.3d 811, 818 (8th Cir. 2003).

23 In determining a claimant’s credibility, the ALJ may consider “ordinary techniques of  
24 credibility evaluation,” such as reputation for lying, prior inconsistent statements concerning

1 symptoms, and other testimony that “appears less than candid.” *Smolen v. Chater*, 80 F.3d 1273,  
2 1284 (9th Cir. 1996). The ALJ also may consider a claimant’s work record and observations of  
3 physicians and other third parties regarding the nature, onset, duration, and frequency of  
4 symptoms. *See id.*

5 Plaintiff contends that the ALJ erred in stating that Woods’s allegations were not fully  
6 credible. *See Dkt. 13, pp. 12-16.* The ALJ found Woods’s allegations not to be fully credible for  
7 several reasons: they were not fully consistent with the treatment record, they were inconsistent  
8 with reports in the record regarding Woods’s activities, and Woods did not fully comply with  
9 treatment recommendations. *See AR 19.*

10 As noted by the ALJ, the alleged intensity of Woods’s restrictions was contradicted by  
11 his performance-based physical capacity evaluation, administered in October of 2012. *See AR*  
12 19. “Contradiction with the medical record is a sufficient basis for rejecting the claimant’s  
13 subjective testimony.” *Carmickle*, 533 F.3d at 1161. Woods alleged that he could not bend,  
14 stoop, squat, or lift more than five pounds. *See AR 56, 239, 263.* However, during the six-hour  
15 performance-based functional assessment, physicians found that Woods was able to perform  
16 these tasks at the level of sedentary work. *See AR 1012-15.* Woods does not allege any error in  
17 this reasoning. *See Dkt. 13, pp. 12-16.* This clear and convincing reason is sufficient to affirm the  
18 ALJ’s credibility determination, being supported by substantial evidence. *See Tonapetyan*, 242  
19 F.3d at 1148.  
20

21 C. The ALJ’s Findings at Step Five.

22 If a claimant cannot perform his or her past relevant work, at step five of the disability  
23 evaluation process the ALJ must show there are a significant number of jobs in the national  
24 economy the claimant is able to do. *See Tackett v. Apfel*, 180 F.3d 1094, 1098-99 (9th Cir. 1999);  
25  
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1 20 C.F.R. § 404.1520(d), (e), § 416.920(d), (e). The ALJ can do this through the testimony of a  
2 vocational expert or by reference to defendant's Medical-Vocational Guidelines (the "Grids").  
3

4 *Osenbrock v. Apfel*, 240 F.3d 1157, 1162 (9th Cir. 2000); *Tackett*, 180 F.3d at 1100-1101.  
5

6 An ALJ's findings will be upheld if the weight of the medical evidence supports the  
7 hypothetical posed by the ALJ. *See Martinez v. Heckler*, 807 F.2d 771, 774 (9th Cir. 1987);  
8 *Gallant v. Heckler*, 753 F.2d 1450, 1456 (9th Cir. 1984). The vocational expert's testimony  
9 therefore must be reliable in light of the medical evidence to qualify as substantial evidence. *See*  
10 *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988). Accordingly, the ALJ's description of the  
11 claimant's disability "must be accurate, detailed, and supported by the medical record." *Id.*  
12 (citations omitted). The ALJ, however, may omit from that description those limitations he or  
13 she finds do not exist. *See Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).

14 At the hearing, the ALJ posed a hypothetical question to the vocational expert containing  
15 substantially the same limitations as were included in the ALJ's assessment of Woods's RFC.  
16 *See* AR 76-82. In response to that question, the vocational expert testified that an individual with  
17 those limitations—and with the same age, education and work experience as Woods—would be  
18 able to perform other jobs. *See id.* Based on the testimony of the vocational expert, the ALJ  
19 found Woods would be capable of performing other jobs existing in significant numbers in the  
20 national economy. *See* AR 34-35.

21 Again, Woods argues that given the ALJ's harmful errors alleged above, the hypothetical  
22 question the ALJ posed is incomplete. *See* Dkt. 13, pp. 16-18. But because the ALJ did not  
23 commit any harmful error, here too the ALJ did not err.  
24

1                   CONCLUSION

2                   The ALJ properly concluded Woods was not disabled. Defendant's decision to deny  
3 benefits is therefore AFFIRMED.

4                   IT IS SO ORDERED.

5                   DATED this 22nd day of December, 2015.  
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8                     
9                   Ronald B. Leighton

10                   United States District Judge